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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

10 JUANA ORTIZ-DE LOZANO, individually
and on behalf of the Class Members,

Case Number:
2:21-cv-01774-APG-BNW

Plaintiff,

vs.

N.A.R., INC. d/b/a NORTH AMERICAN
RECOVERY, a foreign corporation,

Defendant.

MOTION TO AMEND COMPLAINT

Plaintiff, Juana Ortiz-De Lozano, by and through counsel, Cogburn Law, moves this court for an order allowing Plaintiff to file her First Amended Complaint. This Motion is made and based upon the papers and pleadings on file herein, the following Memorandum of Points and Authorities, any exhibits attached hereto, and any oral argument this Court may choose to entertain.

1 **I. MEMORANDUM OF POINTS AND AUTHORITIES**

2 The Proposed Amended Complaint, attached as **Exhibit 1** to this Motion, removes
3 reference to two things: (1) Class allegations and (2) and the mistaken inclusion of a paragraph
4 asserting NAR is not a licensed Collection Agency in the State of Nevada. NAR is licensed as
5 they have asserted. The proposed amendment is not for the purpose of delay, but rather refine
6 allegations consistent with the representations made by NAR regarding minimal filings and the
7 issues with meeting the numerosity element for establishing a Class. As such, this Court should
8 permit the Amendment, which clarifies the nature of the Claims between the parties at issue before
9 this Court.

10 **II. LEGAL ARGUMENT**

11 Rule 15 provides that leave to amend “shall be freely given when justice so requires.”
12 Fed.R.Civ.P. 15(a). According to the Supreme Court, “this mandate is to be heeded.” *Foman v.*
13 *Davis*, 371 U.S. 178, 182 (1962). “If the underlying facts or circumstances relied upon by a
14 plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim
15 on the merits.” *Id.* Accordingly, the Ninth Circuit follows a “strong policy permitting amendment,”
16 *Fuller v. Vines*, 36 F.3d 65, 67 (9th Cir. 1994); and cautions that leave to amend should only be
17 denied in extreme cases such as undue delay, bad faith, or dilatory motive on the part of the
18 movant. *Johnson v. Buckley*, 356 F.3d 1067 (9th Cir. 2004).

19 Dismissal without leave to amend is improper unless it is clear, upon de novo review that
20 the complaint could not be saved by any amendment. See *Missouri ex rel. Koster v. Harris*, 847
21 F.3d 646, 655 (9th Cir.), cert. denied sub nom. *Missouri ex rel. Hawley v. Becerra*, 137 S. Ct. 2188
22 (2017); *AE ex rel. Hernandez v. County of Tulare*, 666 F.3d 631, 636 (9th Cir. 2012); *Jewel v.*
23 *Nat'l Sec. Agency*, 673 F.3d 902, 903 n.3 (9th Cir. 2011); *Thinket Ink Info Res., Inc. v. Sun*

1 *Microsystems, Inc.*, 368 F.3d 1053, 1061 (9th Cir. 2004). Amendment is appropriate for the reason
2 stated above.

3 **III. CONCLUSION**

4 Plaintiff respectfully requests this Court grant the Motion and permit the Proposed
5 Amended Complaint to be filed. The Amendment, if granted, should be without prejudice to the
6 re-assertion of Class claims should discovery or other information provide a factual basis to re-
7 assert those claims.

8 Dated this 29th day of November, 2021.

9 **Order**

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10 IT IS ORDERED that ECF No. 18 is
11 DENIED without prejudice. The parties
12 are directed to meet and confer about
13 Plaintiff's proposed amended complaint.
See LR 16-1(d). If the parties agree, the
parties may file a stipulation to amend
the complaint. If the parties cannot
agree, Plaintiff may refile the motion.

By: /s/Erik W. Fox

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14 IT IS SO ORDERED

DATED: 1:48 pm, November 30, 2021


BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that I electronically filed the foregoing **MOTION TO AMEND**
17 **COMPLAINT** with the Clerk of the Court for the United States District Court by using the court's
18 CM/ECF system on the 29th day of November, 2021.

19 I further certify that all participants in the case are registered CM/ECF users and
20 that service will be accomplished by the CM/ECF system.

22 /s/Katie Johnson

23 An employee of Cogburn Law